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Supreme Court, U.S.
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No. 97-0639

In The

Supreme Court of the United States

October Term, 1997

SANDRA S. BARNES,

Petitioner,

vs.

MONTGOMERY COUNTY BOARD OF EDUCATION,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

JOHN C. FOGLE
Counsel of Record
WILLIAM H. FOGLE
FOGLE & MAZE, P.S.C.
126 West Main Street
Mt. Sterling, Kentucky 40353
(606) 498-0868
Counsel for Respondent, Montgomery County Board of Education

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OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED

Whether petitioner, Sandra S. Barnes', claim of hostile work environment sexual harassment was supported by the evidence.

STATEMENT OF THE CASE

This is a suit for hostile work environment sexual harassment dismissed in District Court and affirmed by the Court of Appeals. Review is now sought here. The petitioner, Sandra S. Barnes, was a school bus driver employed by respondent, Montgomery County, Kentucky Board of Education. Tim Keenan was the School Board's Director of Transportation.

Sandra Barnes stated that Keenan "brushed against her" in April, 1992 when she and Keenan were talking to a teacher about a forthcoming school trip. On her return from that trip a few days later, according to Sandra Barnes, she was cleaning her bus at the bus garage on a Sunday afternoon when "somebody came up behind me and pinched me." She said it was Tim Keenan. TE Vol. I, p. 72. No one else was around.

Other than those two instances Sandra Barnes "never did have no problems with him because I was never around him. I was always at the Camargo school and I was never around the bus garage . . . except to go down there to have my bus inspected so I was never around Keenan up until the first part of April when the problem took place."

"So, you never did have any problems with Keenan up until the incident that you refer to when you got back from Hilton Head; isn't that correct?

Answer: I think so, yes." T.E. Vol. I, pp. 99, 100.

Following the April incident testified to by Sandra Barnes, she continued her daily duties as usual including a special trip to Louisville, Kentucky during the latter

part of April, 1992 until her employment was discontinued on May 30, 1992 because the school superintendent, Richard Hughes, believed she had padded her time on the Louisville trip.

Sandra Barnes contended that on May 30, 1992 when Keenan communicated the decision not to rehire her he said that "if I valued my job enough to go along with him, and it depended on what I wanted to do as to whether I had a job for the next year or not." TE Vol. I, p. 86.

Based on the May 30, 1992 incident, Barnes asserted a quid pro quo sexual harassment claim but the jury rejected that claim (Appendix p. 274). Petitioner has not pursued the quid pro quo claim, either at the trial level or on appeal.

Contrary to some references in the record, there is no testimony that Keenan ever placed his hands on Barnes' buttocks.

REASON FOR DENYING THE PETITION

Petitioner contends that the Sixth Circuit failed to apply a subjective standard in assessing her proof. *Harris v. Forklift Systems, Inc.*, 510 U.S. 171 (1993) holds emphatically that a plaintiff's proof must satisfy *both* an objective *and* a subjective test. The Sixth Circuit followed those instructions precisely. It inevitably concluded that the petitioner had failed to establish an objectively hostile work environment.

Title VII's proscription of sex discrimination is not aimed at boorish behavior or conduct which might be tortious by state law. Rather, it prohibits sexual harassment which alters the conditions of employment. *Meritor Sav. Bank FSB v. Vinson,* 477 U.S. 57 (1986). The conduct must be so severe or pervasive as to alter the conditions of employment by creating an abusive working environment.

Petitioner has cited various opinions describing sexually abusive conduct which so distressed female employees that it affected their job performance. But Sandra Barnes continued her employment without any problems including her daily bus runs and outside trips.

As the Sixth Circuit correctly observed, Keenan actions were isolated occurrences which did not nor by any objective analysis could interfere with Barnes' work performance.

CONCLUSION

The case has been correctly decided and the petition should be denied.

Respectfully submitted,

JOHN C. FOGLE
Counsel of Record
WILLIAM H. FOGLE
FOGLE & MAZE, P.S.C.
126 West Main Street
Mt. Sterling, Kentucky 40353
(606) 498-0868
Counsel for Respondent,
Montgomery County Board
of Education